


JAY, JOHN

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Abraham Lincoln's Contemporaries

John Jay

Excerpts from newspapers and other
sources

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Number 1663

The Federalist, the Constitution, and the Civil War

Our age distrusts ideas. They are regarded as fanatics' tools, Freudian rationalizations, or cloaks for narrow economic interests. They no longer appear to be what separates man from the animal kingdom. Constitutional ideas are no exception, and more students of history study social processes than constitutional development.

Such assumptions have led students of Lincoln's era to ask in what ways the Civil War shaped the Constitution and not in what ways the Constitution shaped the Civil War. Only recently, with the work of Arthur Bestor, Harold Hyman, and their many students and disciples, have constitutional historians of the Middle Period come to look at events the other way around and see the Constitution as more a shaper than a follower of social, political, and military events.

This has been a most valuable corrective. It has helped us to make sense of Lincoln's age as an age which thought constitutions crucial shapers of human destiny and not the high-sounding rationalizations of the social group which is ruling the other social groups in the nation. It has sent some historians back to the long-neglected texts of the legal commentators, law professors, and students of politics who were most influential in shaping that age's understanding of constitutional conflict.

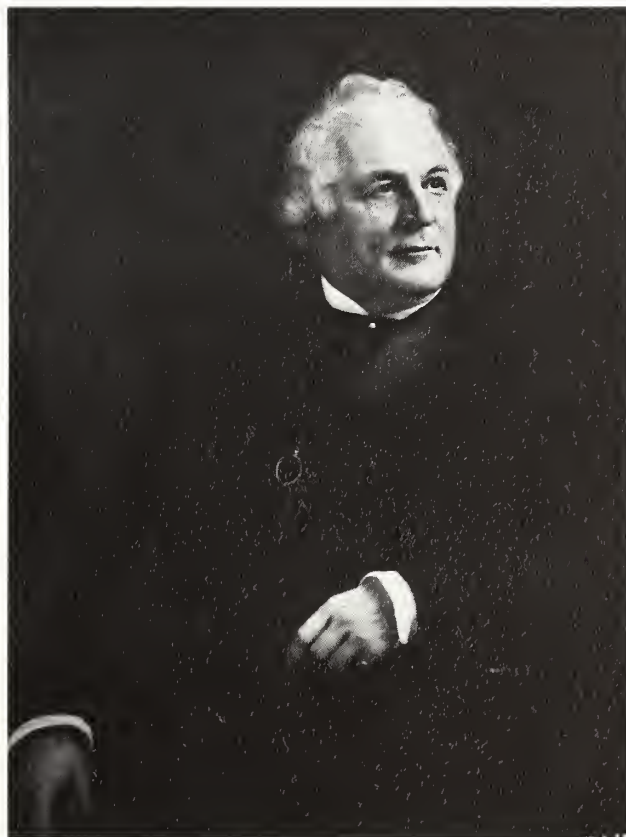
Right now, there seem to be only two faults, one minor and one more important, with this commendable turn of events. First, some of the work has been rather superficial and poorly grounded, particularly in the pamphlet sources and the drier textbooks of constitutional law and government. This is presumably only a sign of the movement's youth; there has not been enough time for scholars to master a wide range of the literature. Second, and more serious perhaps, the emphasis on the Constitution's stubborn ability to resist social forces that might alter it to their temporary whim slights the rather daring nature of some of the constitutional thought of the Middle Period.

From time to time, articles

in *Lincoln Lore* have commented on certain important aspects of constitutional thought (see Numbers 1623, 1649, and 1650 for discussions of William Whiting and Horace Binney, for example). Articles on these subjects will continue to appear because constitutional issues are the crucial ones for the reputations of American Presidents. Anyone who has read the old *History of the United States under the Administrations of Jefferson and Madison* by Henry Adams or one of the newer novels by Gore Vidal, *Burr*, knows that Thomas Jefferson's reputation did not survive his constitutional about-face on the question of the constitutionality of territorial acquisitions by the Executive in the case of the Louisiana Purchase. Likewise, the crucial question for evaluating Abraham Lincoln's administration remains an essentially constitutional question. Was President Lincoln willing to bend the Constitution to save the Union but not to free the slaves?

There is no intention to answer that question here, and it is stated merely to suggest the importance of understanding the constitutional thought not only of Abraham Lincoln but of his era in general. With the thought of that importance in mind, these articles on constitutional issues in the Civil War will continue.

One of the signs of the thinness of the work done on constitutional thought during the Civil War is the curious absence of any literature on the question of what happened during Lincoln's administration to the most important commentary on the American Constitution ever written, *The Federalist* papers. There is only one reference to *The Federalist* in all of Harold Hyman's book, *A More Perfect Union*, and there it is given only passing mention as one in a long list of books read by one of the period's constitutional thinkers. Douglass Adair, the noted expert on *The Federalist*, asserts that the Civil War marked a major turning point in American appreciation of the work of Alexander Hamilton, John Jay, and James Madison, but he does not mention any edition of the papers or commen-



Courtesy the Union League Club of New York City

FIGURE 1. John Jay

tary on them which stemmed from the period of the war itself; he simply notes a much altered understanding *after* the war was over.

There was, however, a rather important edition of *The Federalist* published during the Civil War, and the circumstances surrounding its publication provide an interesting insight into the passions which surrounded constitutional interpretation in the North during that period and the radical sorts of thinking which that great crisis could evoke.

In 1863, Henry B. Dawson of Morrisania, New York, published a new two-volume edition of *The Federalist* based on careful research in the New York Historical Society. It was called *The Foederalist: A Collection of Essays, Written in Favor of the New Constitution, as Agreed upon by the Foederal Convention, September 17, 1787*.

The son of a British gardener who emigrated to New York in 1834, Henry B. Dawson began doing historical writing in the 1850s, after a varied career as gardener, accountant, insurance salesman, and journalist. A temperance advocate, Dawson was an early convert to the Republican party from his original convictions as a Democrat (he voted for Polk in 1844), a Barnburner (the anti-Southern wing of New York's Democratic party), and a Free Soiler in 1848. Dawson retained his old interest in states' rights throughout his flirtation with new reform interests, and by 1860, apparently, he had decided that the Republican party had dangerous tendencies towards centralization and disregard of the Constitution's protections of the rights of the states.

Doubtless his political opinions helped persuade him of the need for a definitive edition of *The Federalist*, and he planned to issue an elaborate set of notes to accompany the two volumes, two volumes of the writings of the Anti-Federalists, and some original work of his own on the meaning of *The Federalist*. Only the edition of *The Federalist* itself appeared, however, and Dawson's other historical interest (in military history, the local history of Westchester County, New York, and the American Revolution) soon displaced his interest in doing a major work on the Constitution. There was an antiquarian and purely historical bent to much of his work; he could get quite excited about the merits of Israel Putnam's generalship (so excited, in fact, that the Connecticut Legislature took special action to protect the reputation of their Revolutionary hero from Dawson's onslaught) or Mad Anthony Wayne's assault on Stony Point. He does not seem to have been active as a political pamphleteer during the Civil War, nor was he notably active in Democratic party politics. Therefore, one might surmise that a fair portion of his interest in *The Federalist* was in producing an historically accurate edition of those very important constitutional commentaries. This conclusion is buttressed by his dedication of the book, not to George McClellan or Jefferson Davis or Fernando Wood, but to that quiet Massachusetts antiquarian George Livermore (see *Lincoln Lore* Number 1621).

Dawson prefaced his edition with an elaborate 89-page introduction which carefully traced the history of the conflict over the authorship of some of the papers and noted some twenty previous editions of the work since the essays first appeared in a New York newspaper. This discussion seems harmless enough, though it does tend to stress the importance of James Madison at the expense of Alexander Hamilton. After the war, exactly the reverse would be the case with most *Federalist* scholars who were anxious to deemphasize the role of the Virginian Madison in writing the definitive interpretation of the Constitution, which had been repudiated by Virginia itself and saved only by a war on Virginia and her sister Southern states.

What provoked the most interest at the time (and still does) was a series of introductory remarks about the political circumstances surrounding the writing of *The Federalist* in the first place. These remarks, made almost in passing, were a startling prefiguring of Charles Beard's *Economic Interpretation of the Constitution of the United States*, written fully fifty years later than Dawson's introduction. Beard's book,

though now discredited, dominated thought about the Constitution for forty years.

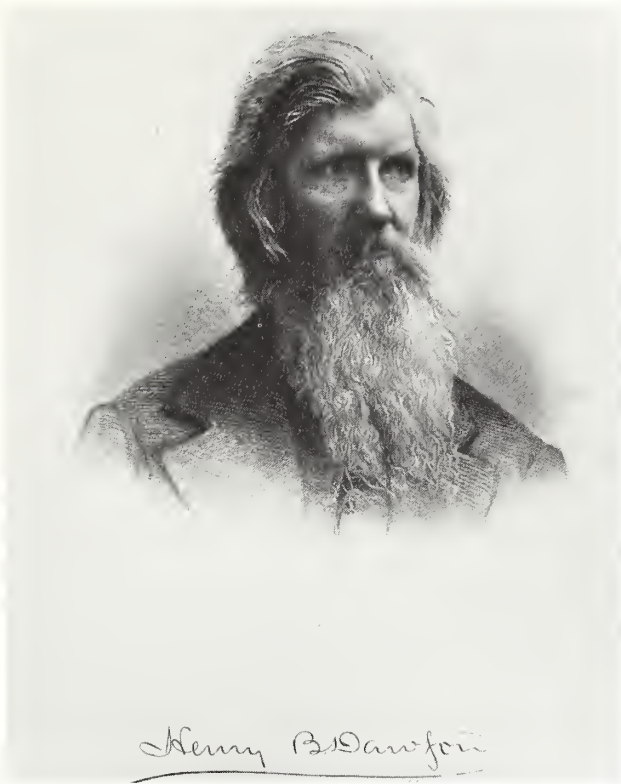
Dawson stressed the importance of New York for the new nation and the reluctance of New York to ratify. The giant state had the ability to cut New England off completely from the Middle Atlantic and Southern states and had shown very little interest in joining the new national union. Two of the three delegates from New York to the Constitutional Convention in 1787 had walked out, and the opposition to the new instrument of government within the state was well organized and eloquent. The greatest problem of the Constitution's advocates, claimed Dawson, was finding leaders inclined and qualified to take their case to the hostile people of the state. Robert R. Livingston was too lazy (or as Dawson phrased it, "an overpowering love of ease prevailed over every other trait in his character"). James Duane had been too thick with Crown authorities before the Revolution to have any *rapport* with the people now. John Jay, though a capable diplomat and hard-worker, "nevertheless failed — if he ever tried — to secure the hearty sympathy of the masses of his countrymen, and was not qualified to direct them in any struggle whatever." Jay was so uncompromising as to be almost bull-headed, and "the greater number of his fellow-citizens considered him selfish, impracticable, and aristocratic."

Leadership, therefore, fell naturally to Alexander Hamilton, learned, well liked, opportunistic, and eloquent. Hamilton devised this strategy, according to Dawson:

It is evident, . . . that he resolved to appeal to the cupidity of the commercial classes — with whose well-known tendency to conservatism, at all times, he was well acquainted — by assuming that the immediate adoption of the proposed Constitution, *without amendment*, by the State of New York, was necessary in order to preserve the Union from disruption, and the State from anarchy, if not from dismemberment and annihilation; that a peremptory rejection of it by the State of New York, or a prolonged delay in ratifying it, which would be necessary if a previous revision of the instrument should be demanded by that State, would be productive of the most serious evils, both to the State and to the Union; and that the derangement of the Foederal finances was the legitimate result of a radical defect in the Articles of Confederation; while the apparent stagnation of trade, — the necessary consequence of an oversupply of goods and of an undue proportion of vendors when compared with the aggregate of the population, — by being magnified to such an extent, and presented in such a manner, as to make them appear as the necessary results of a defective form of Government, he hoped, might also afford him great assistance as an introduction both to his projected condemnation of the existing Foederal system, and to his proposed appeal in behalf of "the new Constitution."

When Dawson's introduction fell into the hands of a stalwart New York Republican pamphleteer who happened also to be a grandson of one of the leaders mentioned disparagingly in the work, the fireworks ignited. John Jay was a fiery Republican organizer and pamphleteer. A long-time opponent of slavery, he had been one of the earliest founders of New York's Republican party. He was also a founder of the Union League Club of New York, formed to combat disloyalty in the North, and served as president of that organization in 1866 and in 1877. He was minister to Austria and later a civil service reformer.

During the Civil War, Jay contributed over twenty pamphlets and numerous speeches to the Republican cause. When he saw Dawson's book, he wrote a letter of protest to the *New York Evening Post*. Dawson damned *The Federalist* with faint praise, said Jay, in the very hour when the constitutional work of the Founding Fathers should be most venerated. Dawson had slandered "HAMILTON'S magnificent logic and broad patriotism" by attempting "to belittle his grand and successful efforts to array the people on the one side of the constitution, by representing it as an 'appeal to the cupidity of the commercial classes.'" Finally, he had totally



Courtesy Fort Wayne Public Library

FIGURE 2. Henry B. Dawson

misrepresented the character and reputation of his grandfather, John Jay. "I shall not trouble myself," wrote Jay, "to inquire whether these charges have originated in ignorance or in malice, whether they result from the prejudices of education as a states right democrat, or deeper yet, from your native British instincts, if, as I have heard you are by birth an Englishman, or whether they are in any way connected with the design announced in your prospectus to revive the anti-federal publications . . . , from whose strenuous efforts to prevent the adoption of the constitution the country was so happily rescued by the earnest patriotism of the federalists." Jay ended with a peevish and rather stuffy criticism of Dawson's retaining an accent over the *a* in his grandfather's name despite Jay's having ceased at an early age to sign his name with a dash over the *a*.

Dawson replied in kind, noting that it was, "indeed, proper that you should remember with gratitude the grandfather through whose bounty you eat your daily bread in busy idleness; nor is it strange that you should be jealous of that other portion of your inheritance — 'the fame of your grandfather' — your own best title to distinction." Dawson refused to apologize for his English birth, saying he was a New Yorker by choice and for 30 of his 42 years. He also admitted being "a States'-rights democrat," but added that Jay had been one also at one time, not out of grounded conviction, however, but "because you supposed that you might thereby the sooner establish yourself politically among the German and other European Republicans, and, as it has since appeared, the sooner obtain your translation to London" (as Ambassador to the Court of Saint James).

Later, Jay published a "Second Letter on Dawson's Introduction to the Federalist" as a pamphlet with the significant phrase on the cover, "New Plottings to Aid the Rebellion" and with an assertion of "Its Connection with Similar Efforts by Traitors at Home and Foes Abroad, to Maintain the Rebel Doctrine of State Sovereignty for the Subversion of the Unity

of the Republic, and the Supreme Sovereignty of the American People." Jay had decided that Dawson's were the errors not of ignorance but of malice and that "his 'Introduction' is but part of a wide-spread attempt to mystify and demoralize the American people in regard to the American constitution: to convince them, if possible, that they do not constitute a nation: and to persuade them that their only safety consists in dissolving Union, and recognizing the individual sovereignty of each separate State." Jay recognized immediately that the acceptability of the Constitution depended on the assumption that the period preceding it, when the country was governed by the Articles of Confederation, was a time of disaster, crisis, and national ineffectualness. If times were not as bad as Daniel Webster ("It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit") and George Ticknor Curtis (the Union was "feeble, and trembling on the verge of dissolution") claimed it was, then, Jay knew, "the American people, by the most scandalous deception, were swindled into the ratification of the Constitution."

This was all too much for Dawson, and he sued John Jay as well as the American News Company, which had distributed the pamphlet, for libel. In October of 1865, the Court of Common Pleas under Judge Alexander Cardozo heard the suit, with two of the greatest lawyers in America, William M. Evarts (who would defend Andrew Johnson in his impeachment trial) and Joseph H. Choate, defending John Jay. Dawson cited the title page of the *Second Letter* as the libellous matter. Jay's skilled counsel evoked laughter in belittling Dawson's case:

[Dawson's] counsel also asked what was the meaning of having such a motto on the pamphlet as the famous words of General Dix about shooting down the American flag ["If any man attempts to haul down the national flag, shoot him on the spot."]? Was it not intended to convey the significance that Dawson was a traitor, who ought to be shot down for dishonoring the American flag? What else could it mean? Shoot down what? Mr. Choate — The book, not the man. (Laughter.)

Evarts then launched into a ringing defense of freedom of the press and the right to criticize literary and political subjects of a public nature. "The writer of a book on bank note counterfeiting," he added, "might be written down a fool and an ass by a literary critic; but the critic would not be justified in calling the writer a counterfeiter himself." Although several of the biographical sketches of John Jay and Henry B. Dawson note that they had a disagreement, none notes that there was a legal case, despite the eminence of the parties to the suit and their counsel. Such were, nevertheless, the explosive tempers that could be aroused over interpretations of the Constitution in the North during the Civil War. What is striking to the modern reader is the foreshadowing of Charles Beard's economic interpretation of the Constitution. To be sure, Dawson was a long way from Beard. He wrote as though the Constitution were a dog of a product that Hamilton had to sell and that Hamilton hit upon the ingenious idea of selling it as being to the economic interests of the merchants. Beard would insinuate that the very men who wrote the Constitution were attempting to protect their personal economic interests. Neither interpretation is highly regarded by modern scholars who are rediscovering the importance of constitutional ideas.

John Jay sensed only the importance of the interpretation of the course of events under the Articles of Confederation. He found the allegation of an appeal to "cupidity" repulsive but also, apparently, unbelievable and wasted no time in explaining the economic interests of the friends and foes of the Constitution. Jay was so transfixed by the slander on his family name that the argument degenerated to a level almost of name-calling and important issues were lost in the shuffle.

Dawson's introduction to *The Federalist* was an interesting, if only fleeting, instance of the ability of the Civil War to take constitutional thinking in new directions. As such, it was an exception to the rule. Secession wrecked the nation the

Constitution had created and made the whole North, regardless of party, defensive about the Constitution. Neither Republicans nor Democrats tended to think in new ways about the Constitution. Republicans of an anti-slavery bent had long differentiated themselves from abolitionists by saying that they would attack slavery only where the Constitution allowed them. President Lincoln knew that wartime stretching of the Constitution would be unlikely to last and therefore fretted that the Emancipation Proclamation would be null once the war was over. The Republicans were constitutionally conservative. Their opponents, a party which claimed the inheritance of strict constructionist Jeffersonianism, chose to oppose the Lincoln administration with charges that the President rode over the Constitution roughshod. Everyone claimed to be saving the Constitution.

It is important to keep this constitutionally conservative atmosphere in mind in studying Lincoln's Presidency. This should not, however, keep us from noting the ways in which the war strained the Constitution and led, at times, to ideas about that document that were very new indeed.

A Mysterious Presentation Copy of the *Debates*

The recent discussion of the acquisition of the J. S. Bradford presentation copy of the *Political Debates Between Hon. Abraham Lincoln and Hon. Stephen A. Douglas in the Celebrated Campaign of 1858* has aroused considerable interest among *Lincoln Lore's* readers in the location and provenance of the various extant presentation copies (see "Recent Acquisitions: A Presentation Copy of the *Debates*" in *Lincoln Lore* Number 1659). Therefore, this issue initiates a series of articles on the presentation copies in an effort to update the last article on these prized items of Lincolniana, Harry E. Pratt's "Lincoln Autographed Debates" in *Manuscripts*, VI (Summer, 1954), 194-201. *Manuscripts* is not the easiest periodical to come by, and there have been enough developments (changes in ownership, more knowledge of the circumstances surrounding the presentation, etc.) to warrant a brief reexamination of the known copies.

When Pratt wrote his piece, the copy presented to "Stephen S. Winchester, Esq. With Compliments of A. Lincoln" was the property of J. K. Lilly of Indianapolis. It is now in the collections of the Lilly Library at Indiana University.

Nothing of note has turned up to explain the provenance of this presentation copy, and that is too bad, because it remains unclear just who Stephen S. Winchester was and why he should have been one of the privileged recipients of Lincoln's book.

We know the story of its discovery in modern times quite by accident. Charles Goodspeed, the Boston rare book dealer, happened to use the story of its discovery as an illustration of the ironies of the rare book trade (and, perhaps, as a subtle advertisement for his own honesty and thoroughness as an appraiser of estates). Henry Winchester Cunningham, an old customer, told Mr. Goodspeed that he was giving his library to a certain society upon his death. Goodspeed was a member of the society and agreed to select the books needed for the society's collections and then sell the duplicates, giving the society credit for the sales price.

By chance, however, Goodspeed was also asked by an independent appraiser of estates to appraise what turned out to be

the very same collection for another purpose: Mr. Cunningham's will had read that the society would receive all of his books and pamphlets except those that a personal friend (unknown to Mr. Goodspeed) might wish to have. Now Mr. Goodspeed would be appraising the estate with something of a conflict of interest involved, for it was likely that the friend would keep anything of great value, and the society would fail to receive it. Nevertheless, he accepted the second commission to appraise the estate as well. The result of Goodspeed's thoroughness was this:

I had nearly finished my examination when I came to an old-fashioned revolving bookcase in the middle of the room. It was filled with a miscellaneous lot of unimportant books — dictionaries, directories, corporation manuals, and the like — the few books of general literature which it held appearing to be of slight value. One of these was the report of the Lincoln and Douglas debates published in Columbus in 1860. The book is common and worth but a few dollars — not enough to call for separate valuation. What then impelled me to take it from the shelf I don't know, but something made me do it. I opened it casually, glanced at the fly-leaf, and saw what I am firmly convinced had never been seen by the owner — a lightly pencilled autograph inscription from Lincoln to A's [Mr. Cunningham's] uncle!

That was an unlucky discovery as far as it concerned the 'Society,' for, of course, when Z [the friend] saw the book valued on my inventory at several hundred dollars he grabbed it, whereas, had I not examined the book, Z would not have known of the inscription and would have undoubtedly left it for the 'Society' to take with the rest of the library.

As for Mr. Goodspeed's thoroughness, one must offer a modest demurrer. In 1940, Goodspeed's Book Shop (but not Mr. Charles Goodspeed) sold the same presentation copy to Mr. Carroll Wilson. George Goodspeed informed Mr. Wilson that Henry Winchester Cunningham was the nephew of Stephen S. Winchester, the party to whom, presumably, Lincoln had given the book. George Goodspeed found a biographical sketch of Winchester in Cunningham's *John Winchester of New England*. Stephen S. Winchester, described therein, was born in Boston and died in Brookline (in 1834 and in 1880, respectively). He was married in Boston (in 1856) to a woman from Plymouth. He worked in the business firm of his father and grandfather and retired early. The bookseller never suggested any plausible connection between this Stephen S. Winchester and Abraham Lincoln, nor has anyone else been able to since.

Later, the Scribner Book Store in New York bought the book in the Carroll Wilson sale and offered it for sale as a book presented to "an old Illinois acquaintance of Lincoln, who was a 2d Lieutenant in the 59th Regiment, Illinois State Militia, 1841, and afterwards fought in the Civil War." Scribner's then described the book as "the book . . . described in C. E. Goodspeed's *Yankee Bookseller*, pp. 182-3, and its only previous owners (letter laid in) are the presentee and his nephew, there called Z." If this was the case, of course, then Stephen S. Winchester, Bostonian, served in the Illinois militia at the miraculous age of seven years.

Mr. Pratt observed in 1954 that these could not be the same Stephen Winchesters, "nor has any Stephen or Stephen S. Winchester in Illinois been definitely identified as having any connection with Lincoln." The state of our information remains the same, alas, and bibliophiles and students of Lincolniana still await a satisfactory explanation of the identity of Stephen S. Winchester Esq.

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